

AMENDED IN ASSEMBLY AUGUST 25, 2005

AMENDED IN ASSEMBLY JULY 12, 2005

AMENDED IN SENATE MAY 17, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 645

Introduced by Senator Dunn

(Coauthors: Assembly Members Evans, Jones, ~~and Laird~~ *Laird*, and
Nunez)

February 22, 2005

~~An act to add Section 354.9 to the Code of Civil Procedure, and~~
~~to~~ *An act to add Chapter 3.2 (commencing with Section 8253) to*
Division 1 of Title 2 of the Government Code, relating to Mexican
repatriation.

LEGISLATIVE COUNSEL'S DIGEST

SB 645, as amended, Dunn. Mexican repatriation: commission.

(1) Existing law establishes various advisory boards and commissions in state government with specified duties and responsibilities.

This bill would, until January 1, 2008, create the ~~commission~~ *Commission* on the Unconstitutional Deportation of American Citizens during the 1930's within state government. The bill would require the commission to, among other things, gather facts regarding, and conduct a study of, the unconstitutional removal and coerced emigration of United States citizens and legal residents of Mexican descent, between 1929 and 1944, to Mexico during the 1930's "Repatriation" Program.

The bill would require the commission to hold public hearings and make a written report to the Governor and the Legislature concerning its actions and its findings and recommendations not later than July 1, 2009. The bill would provide that the commission may apply for and accept private funding once the commission has been convened. The bill would ~~authorize the commission to be convened only if it is determined that sufficient private donations have been deposited with the state and would~~ preclude expenditure of other state funds for these purposes.

The bill would provide that the commission terminates 6 months after it transmits its final report to the Governor and the Legislature on July 1, 2009.

(2) The bill would also establish the 1930's Reparations Fund in the General Fund and a 9-member board of directors appointed by the Governor with the consent of the Senate, with specified duties for administering the fund and making compensation to eligible individuals. The bill would specify the duties of the board and require the board to make a report on its activities to the Governor and the Legislature beginning every 6 months after the first meeting of the board. The board would terminate 90 days after the termination of the fund.

~~(3) Existing law authorizes various persons to bring civil actions for damages under specified circumstances.~~

~~This bill would authorize a victim of unconstitutional, wrongful, or coerced repatriation, defined as any United States citizen or legal resident of Mexican descent who was coerced, forced, or falsely induced to emigrate from this state during the period from 1929 to 1944, to bring a legal action to recover damages in any court of competent jurisdiction in this state.~~

~~The bill would apply these provisions (a) if the victim was coerced, forced, or falsely induced to emigrate by any city, county, or state governmental authority, or anyone acting under color of that authority, including, but not limited to, any private individual or business entity; or (b) if that person resides in this state and has a claim arising out of that unconstitutional, wrongful, or coerced repatriation, as specified.~~

~~The bill would also provide that any action brought pursuant to this provision may not be dismissed for failure to comply with the applicable statute of limitations or to exhaust any applicable administrative remedies or governmental tort claims procedures, if the action is commenced on or before December 31, 2006. The bill would~~

~~bar any legal action brought against the state under this provision by any individual who is eligible to accept compensation from the 1930's Reparations Fund if the Legislature appropriates moneys for the purposes of the provisions governing that compensation.~~

~~The bill would require that if SB 670 is enacted, the provisions of SB 670 are not admissible as evidence of liability in any civil action under this bill.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 354.9 is added to the Code of Civil~~
2 ~~Procedure, to read:~~
3 ~~354.9. (a) The following definitions govern the construction~~
4 ~~of this section:~~
5 ~~(1) "Victim of unconstitutional, wrongful, or coerced~~
6 ~~repatriation" means any United States citizen or legal resident of~~
7 ~~Mexican descent who was coerced, forced, or falsely induced to~~
8 ~~emigrate from this state during the period from 1929 to 1944,~~
9 ~~inclusive, by any city, county, or state governmental authority, or~~
10 ~~anyone acting under color of that authority, including, but not~~
11 ~~limited to, any private individual or business entity that conspired~~
12 ~~with any city, county, or state governmental authority, or anyone~~
13 ~~acting under color of that authority, to violate the state or federal~~
14 ~~constitutional or property rights of that person~~
15 ~~(2) "Damages" means any and all damages for any harm, loss,~~
16 ~~or detriment sustained by any victim of unconstitutional,~~
17 ~~wrongful, or coerced repatriation by reason of the coerced,~~
18 ~~forced, or falsely induced emigration from this state by any city,~~
19 ~~or county governmental authority, or anyone acting under color~~
20 ~~of that authority, including, but not limited to, any private~~
21 ~~individual or business entity that conspired with any city, county,~~
22 ~~or state governmental authority, or anyone acting under color of~~
23 ~~that authority, to violate the state or federal constitutional or~~
24 ~~property rights of any victim of unconstitutional, wrongful, or~~
25 ~~coerced repatriation.~~
26 ~~(b) Notwithstanding any other provision of law, any victim of~~
27 ~~unconstitutional, wrongful, or coerced repatriation who has a~~
28 ~~claim arising out of his or her coerced, forced, or falsely induced~~

~~emigration from this state by any city, county, or state governmental authority, or anyone acting under color of that authority, including, but not limited to, any private individual or business entity that conspired with any city, county, or state governmental authority, or anyone acting under color of that authority, to violate the state or federal constitutional or property rights of any victim of unconstitutional, wrongful, or coerced repatriation, may bring a legal action to recover any damages in any court of competent jurisdiction in this state and that court shall be deemed the proper forum for that action until its completion or resolution.~~

~~(c) No legal action may be brought against the state by any individual who is determined to be eligible to accept compensation from the 1930's Reparations Fund if the Legislature appropriates moneys to carry out the purposes of Chapter 3.2 (commencing with Section 8254) of Division 1 of Title 2 of the Government Code.~~

~~(d) No action brought under this section may be dismissed for failure to do either of the following:~~

~~(1) Comply with the applicable statute of limitations.~~

~~(2) Exhaust any applicable administrative remedies or governmental tort claim procedures otherwise provided by any statute, if the action is commenced in any court of competent jurisdiction on or before July 1, 2011.~~

~~(e) The provisions of Senate Bill 670 of the 2005-06 Regular Session, if enacted, shall not be admissible as evidence of liability, or any other matter, in any civil action under this section.~~

~~SEC. 2.~~

~~SECTION 1. Chapter 3.2 (commencing with Section 8253) is added to Division 1 of Title 2 of the Government Code, to read:~~

~~CHAPTER 3.2. THE COMMISSION ON THE UNCONSTITUTIONAL DEPORTATION OF AMERICAN CITIZENS DURING THE 1930'S~~

~~8253. The Legislature finds and declares all of the following:~~

~~(a) Beginning in 1929, government authorities and certain private sector entities in California and throughout the United States undertook an aggressive program to forcibly remove persons of Mexican ancestry from the United States.~~

1 (b) In California alone, approximately 400,000 American
2 citizens and legal residents of Mexican ancestry were ~~forcibly~~
3 ~~removed~~ *forced to leave* to Mexico.

4 (c) In total, it is estimated that two million people of Mexican
5 ancestry were forcibly relocated to Mexico, approximately 1.2
6 million of whom had been born in the United States, including
7 the State of California.

8 (d) Throughout California, massive raids were conducted on
9 Mexican-American communities, resulting in the clandestine
10 removal of thousands of people, many of whom were never able
11 to return to the United States, their country of birth.

12 (e) These raids also had the effect of coercing thousands of
13 people to leave the country in the face of threats and acts of
14 violence.

15 (f) These raids ~~indiscriminately~~ targeted persons of Mexican
16 ancestry, with authorities and others *indiscriminately*
17 characterizing these persons as “illegal aliens” even when they
18 were United States citizens or permanent legal residents.

19 (g) Authorities in California and other states instituted
20 programs to wrongfully remove persons of Mexican ancestry and
21 secure transportation arrangements with railroads, automobiles,
22 ships, and airlines to effectuate the wholesale removal of persons
23 out of the United States to Mexico.

24 (h) As a result of these illegal activities, families were forced
25 to abandon, or were defrauded of, personal and real property,
26 which often was sold by local authorities as “payment” for the
27 transportation expenses incurred in their removal from the United
28 States to Mexico.

29 (i) As a further result of these illegal activities, United States
30 citizens and legal residents were separated from their families
31 and country and were deprived of their livelihood and United
32 States constitutional rights.

33 (j) As a further result of these illegal activities, United States
34 citizens were deprived of the right to participate in the political
35 process guaranteed to all citizens, thereby resulting in the tragic
36 denial of due process and equal protection of the laws.

37 8253.1. (a) The Commission on the Unconstitutional
38 Deportation of American Citizens During the 1930’s is hereby
39 established within state government.

(b) The commission shall be composed of 12 voting members, who shall be appointed as follows:

(1) Four members appointed by the Governor, not subject to Senate confirmation.

(2) Four members appointed by the Senate Committee on Rules.

(3) Four members appointed by the Speaker of the Assembly.

(c) The commission shall also include the following:

(1) Two ex officio, nonvoting members of the Senate appointed by the Senate Committee on Rules.

(2) Two ex officio, nonvoting members of the Assembly appointed by the Speaker of the Assembly.

(d) Of the four members appointed by the Governor, the four members appointed by the Senate Committee on Rules and the four members appointed by the Speaker of the Assembly, as set forth in subdivision (b), each of the four shall include one of each of the following:

(1) A California public university professor.

(2) An attorney in private practice in California.

(3) A representative of a nonprofit organization that advocates on behalf of Latinos and immigrants.

(4) A public member.

(e) The term of office for all members shall be for the duration of the commission. A vacancy in the commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(f) Seven members of the commission shall constitute a quorum, but a lesser number may hold meetings and hearings.

(g) The commission shall elect a chair and vice chair from among its members. The term of office of each shall be for the duration of the commission.

(h) Members of the commission shall serve without compensation. All members of the commission may be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties if funds are available for these purposes. No state funds, other than private donations available to the commission pursuant to this chapter, shall be appropriated to reimburse members for expenses or for any other purpose under this chapter.

1 8253.2. (a) It shall be the duty of the commission to gather
2 facts regarding, and conduct a study of, the unconstitutional
3 removal and coerced emigration of United States citizens and
4 legal residents of Mexican descent, between 1929 and 1944, to
5 Mexico, during the government sponsored repatriation program
6 of the 1930's.

7 (b) The commission shall hold public meetings or hearings in
8 any city that the commission deems necessary and proper.

9 (c) The commission shall make recommendations to the
10 Governor and the Legislature including, but not limited to, all of
11 the following:

12 (1) Altering California public schools' curricula to include the
13 unconstitutional removal and coerced emigration of American
14 citizens and legal residents to Mexico during the 1930's, as
15 described in Section 8253.

16 (2) Determining responsibility for the unconstitutional
17 removal and coerced emigration of American citizens and legal
18 residents to Mexico during the 1930's.

19 (3) Implementing the fund, as set forth in Section 8254
20 including:

21 (A) Determining the appropriate monetary compensation for
22 eligible recipients of the fund.

23 (B) Establishing eligibility criteria for compensation under the
24 fund.

25 (C) Recommending redress legislation necessary to activate
26 the fund.

27 (4) The commission may make other findings or
28 recommendations it deems necessary to discharge its duties.

29 (d) The commission shall submit a written report of its
30 findings and recommendations to the Governor and the
31 Legislature within two years after the commission has
32 commenced its research and study, as set forth in subdivision (a)
33 of Section 8253.2.

34 8253.3. (a) The commission may authorize any
35 subcommittee or member thereof, for the purpose of carrying out
36 this chapter, to hold hearings and sit and act at those times and
37 places, and request the attendance and testimony of those
38 witnesses and the production of books, records, correspondence,
39 memoranda, papers, and documents that the commission or any
40 subcommittee or member thereof may deem advisable.

(b) The commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive and legislative branches of state government, any and all necessary information that the commission considers useful in the discharge of its duties. All departments, agencies, and independent instrumentalities, or other authorities of the executive and legislative branches of state government shall cooperate with the commission and furnish all information requested by the commission.

(c) The commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of local government, at the discretion of the head of the relevant authority of local government, any and all necessary information that the commission considers useful in the discharge of its duties.

8253.4. (a) The commission is authorized to do all of the following:

(1) Appoint and fix the compensation of personnel as may be necessary.

(2) Obtain the services of experts and consultants.

(3) Enter into agreements for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the commission.

(4) Procure supplies, services, and property, and make contracts, for which payment shall be made by reimbursement from funds of the commission.

(5) Enter into contracts with state or federal agencies, private firms, institutions, and agencies for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(b) The commission shall, not later than July 1, 2009, transmit a final report to the Governor and the Legislature concerning its actions and its findings and recommendations.

8253.6. (a) Private sources may deposit gifts, donations, and other financial support with the state for the purposes of this chapter.

(b) Once the commission has been convened, it may then apply for and accept grants and receive gifts, donations, and other financial support from private sources for purposes of this

chapter, subject to the requirements of Sections 11005 and 11005.1.

~~8253.7. (a) The commission shall be convened pursuant to this chapter only after a determination has been made that private donations in an amount sufficient to support the activities of the commission through the operative period of this chapter have been deposited with the state.~~

~~(c) No state funds shall be used to support the commission~~

~~(b) The commission shall end, and its duties under Sections 8253.2, 8253.3, and 8253.4 shall be revoked, not later than six months after it has transmitted a final report to the Governor and the Legislature concerning its actions and its findings and recommendations under subdivision (b) of Section 8253.4.~~

8253.7. The commission shall end, and its duties under Sections 8253.2, 8253.3, and 8253.4 shall be revoked, not later than six months after it has transmitted a final report to the Governor and the Legislature concerning its actions and its findings and recommendations under subdivision (b) of Section 8253.4.

8254. There is established the 1930's Reparations Fund (hereinafter the fund) in the General Fund. There is also established the 1930's Reparations Fund Board of Directors (hereinafter the board), which shall be responsible for making disbursements from the fund upon appropriation by the Legislature in the manner provided in this section and Section 8254.1.

(a) The board shall do all of the following:

(1) Designate an officer or employee to whom individuals may submit claims of eligibility for disbursement from the fund in a manner prescribed by the board.

(2) Maintain a list of all individuals who submit claims of eligibility for disbursement from the fund.

(3) Encourage, through a public awareness campaign, all eligible individuals to notify the board of his or her claim of eligibility for disbursement from the fund, including his or her current address.

(b) An eligible individual may notify the board of his or her claim of eligibility for disbursement from the fund in a manner prescribed by the board, and may provide supporting documentation.

1 (c) Every individual who has submitted a claim of eligibility
2 for disbursement from the fund in the manner prescribed by the
3 board pursuant to subdivision (b) shall be notified promptly by
4 the board in writing of his or her determination of eligibility for
5 compensation under this section and the provisions of
6 subdivisions (d), (e), and (f).

7 (d) The acceptance of compensation by an eligible individual
8 shall be in full satisfaction of all claims against the State of
9 California arising out of the acts described in Section 8253.

10 (e) If an individual determined by the board to be eligible for
11 compensation refuses to accept compensation, that refusal shall
12 be communicated in writing to the board and that amount of
13 compensation shall remain in the fund. No compensation from
14 the fund may be made to that individual at any time after his or
15 her refusal.

16 (f) If an individual determined by the board to be eligible for
17 compensation neither refuses nor accepts compensation, the
18 amount of the compensation shall remain in the fund and no
19 compensation from the fund may be made to that individual at
20 any time.

21 (g) No individual who is determined by the board to be
22 eligible for compensation from the fund may bring any legal
23 action against the state for any of the acts described in Section
24 8253 if the Legislature appropriates moneys to carry out the
25 purpose of this chapter, whether or not the individual accepts
26 compensation, refuses compensation, or neither refuses nor
27 accepts compensation.

28 (h) No compensation may be made to any individual who
29 accepts payment pursuant to an award of a final judgment or a
30 settlement on a claim against the State of California brought
31 pursuant to Section 354.9 of the Code of Civil Procedure, for any
32 of the acts described in Section 8253.

33 (i) The board shall endeavor to make compensation to eligible
34 individuals in the order of date of birth, beginning with the oldest
35 individual on the date of the enactment of this act, until all
36 eligible individuals have received compensation in full.

37 (j) In attempting to locate an eligible individual, the board may
38 use any facility or resource of any public or nonprofit
39 organization or any other record, document, or information that
40 may be made available to the board.

1 (k) No costs incurred by the board shall be set off against, or
2 otherwise deducted from, any compensation to any eligible
3 individual.

4 8254.1. (a) The board may make disbursements from the
5 fund as to either of the following:

6 (1) To publish and distribute any information they deem
7 necessary.

8 (2) For reasonable administrative expenses of the board,
9 including expenses incurred under subdivisions (c) and (f).

10 (b) The board shall be composed of nine members appointed
11 by the Governor with the consent of the Senate.

12 (1) Except as provided in paragraphs (2) and (3), members
13 shall be appointed for terms of three years.

14 (2) Of the members first appointed, four shall be appointed for
15 terms of two years, as designated by the Governor at the time of
16 appointment.

17 (3) Any member appointed to fill a vacancy occurring before
18 the expiration of that member's term shall be appointed only for
19 the remainder of that term. A member may serve after the
20 expiration of a member's term until a new member is appointed.
21 No person may be appointed as a member for more than two
22 consecutive terms.

23 (c) Members of the board shall serve without pay, except that
24 members of the board shall be entitled to reimbursement for
25 travel, subsistence, and other necessary expenses incurred by
26 them in carrying out the duties of the board.

27 (d) Five members of the board shall constitute a quorum.

28 (e) The chair of the board shall be elected by the members of
29 the board.

30 (f) The board shall have an executive director who shall be
31 appointed by the board. The board may appoint and fix the pay of
32 additional staff as it may require.

33 (g) The board may accept, use, and dispose of gifts or
34 donations of services or property for the purposes authorized
35 under subdivision (a).

36 (h) Not later than 12 months after the first meeting of the
37 board and every six months thereafter, the board shall transmit to
38 the Governor and to the Legislature a report describing the
39 activities of the board.

1 (i) Ninety days after the termination of the fund, the board
2 shall terminate and all obligations of the board under this chapter
3 shall cease.

4 8254.2 The provisions of this chapter are severable. If any
5 provision of this act or its application is held invalid, that
6 invalidity shall not affect other provisions or applications that can
7 be given effect without the invalid provision or application.